#21

PATENT
0147-0189P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant:	R. FISCHER et al.	Conf:	1798
Appl. No.:	09/419,788	Group:	1644
Filed:	October 18, 1999	Examiner:	P. NOLAN

For: MOLECULAR PATHOGENICIDE MEDIATED PLANT DISEASE RESISTANCE

RESPONSE TO NOTICE TO COMPLY

Assistant Commissioner for Patents
Washington, DC 20231

November 7, 2002

Sir:

In response to the Notice to Comply mailed October 21, 2002, the Applicants respectfully assert that there is no reason to correct the substitute Sequence Listing filed on July 29, 2002. Specifically, the Examiner states that a correction in the sequence listing is necessary because "SEQ ID NO. 138 which is disclosed in Figure 25 as K D W E/S H L, is referred to in the Paper Copy submitted on 8-7-02 as KDWEHL."

The Applicants respectfully point out that the sequence disclosed in Figure 25 as K D W E/S H L is a consensus sequence in which the fourth residue can be *either* E (Glu) or S (Ser). In this particular situation, the Applicants have chosen to disclose this sequence as two separate sequences, SEQ ID NO: 138 *and* SEQ ID NO: 139. (Applicants refer to the substitute Sequence Listing filed on July 29, 2002). SEQ ID NO: 138 discloses this particular consensus sequence as having an "E" (Glu) at the fourth residue:

```
<400> 138
Lys Asp Trp Glu His Leu
  1               5
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SEQ ID NO: 139, on the other hand, shows the same sequence, however, with an "S" (Ser) at the fourth residue:

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<400> 139
Lys Asp Trp Ser His Leu

  1               5
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Thus, SEQ ID NOS: 138 and 139 accurately describe the consensus sequence of K D W E/S H L since they disclose this particular sequence with either the "E" (Glu) or the "S" (Ser) at the fourth residue. There is nothing listed in the current USPTO sequence rules that says this method of presenting a consensus sequence such as K D W E/S H L is unacceptable. Applicants, therefore, respectfully assert that no correction to the substitute Sequence Listing filed July 29, 2002 is necessary.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By mmarmstrong (Reg No 40,069)
Gerald M. Murphy, Jr., #28,977
P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

GMM/MAA/CVC
0147-0189P

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

09/419,788

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application

Commissioner of Patents

The communication filed on **8-7-02** is not fully responsive to the communication mailed 1-25-02 for the reason(s) set forth on the attached Notice to Comply With the Sequence Rules or CRF Diskette Problem Report.

Since the response appears to be **bona fide**, but through an apparent oversight or inadvertence failed to provide a complete response, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

In addition:

Specifically SEQ ID NO. 138 which is disclosed in Figure 25 as K D W E/S H L, is referred to in the Paper Copy submmitted on 8-7-02 as KDWEHL. Correction is required. Applicant is required to carefully review that all sequences disclosed in the specification match the sequences in the Paper Copy and CRF, especially, in light of the very large amount of sequences disclosed.

Any inquiry concerning this communication should be directed to Examiner **Patrick J. Nolan**, Art Unit **1644**, whose telephone number is **703-305-1987.**

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 308-0196.

Patrick J. Nolan

PATRICK J. NOLAN, PH.D.
PRIMARY EXAMINER
10/20/02

Application No.: 09/419,758

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- [x] 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to these regulations, published at 1114 OG 29, May 15, 1990 and at 55 FR 18230, May 1, 1990.
- [ ] 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- [ ] 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- [ ] 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- [ ] 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- [ ] 6. The paper copy of the "Sequence Listing" is not the same as the computer readable from of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- [x] 7. Other: See Communication

Applicant Must Provide:

- [x] An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- [x] An initial or substitute paper copy of the "Sequence Listing", as well as an amendment directing its entry into the specification.
- [x] A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216
For CRF Submission Help, call (703) 308-4212
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